IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5392 OF 1994

ANJUMAN KHAIRUL ISLAM & ANR. ...PETITIONER.

VS.

MR. J.I.HUSSEIN & ORS. ...RESPONDENTS.

MR. A.M.JOSHI WITH MR. S.D.RAYRIKAR FOR THE PETITIONER.

MS.MANISHA VICHARE I/B. MR. BHAVESH PARMAR FOR RESPONDENT NO.1.

MR. S.K.CHINCHALIKAR AGP FOR RESPONDENT NOS. 2 & 3.

ALONGWITH

WRIT PETITION NO. 4465 OF 1995

J.I.HUSSAIN ...PETITIONER.

VS.

ANJUMAN KHAIRUL ISLAM & ORS. ...RESPONDENTS.

MS.MANISHA VICHARE I/B. MR. BHAVESH PARMAR FOR PETITIONER

MR. A.M.JOSHI WITH MR. S.D.RAYRIKAR FOR RESPONDENT NO.1.

MR. S.K.CHINCHALIKAR AGP FOR RESPONDENT NOS. 3 & 4.

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CORAM : A.P. DESHPANDE, J.

DATE : January 18, 2007.

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P.C.

1. These two petitions challenge the same Order passed by the University and Collage Tribunal, dated 23.11.1994. Writ Petition No. 5392 of 1994 is filed by the College Management, wheres the other writ petition is filed by an employee, who was working as a peon since 20th July, 1981 with the College.

2. Few material facts, which are necessary to adjudicate the issue involved in these petitions are set out below :-

i) The employee was appointed on 20th July,1981 as a peon in senior college. On 3.5.1984, the employee was terminated from service. Being aggrieved by the termination, the employee filed an appeal before the University and College Tribunal.

ii) The appeal was opposed by the

Management,however, by Judgment and Order, dated 20th March, 1987, the Tribunal allowed the appeal and directed reinstatement of the employee with continuity of service and full back wages.

iii) During the pendency of the appeal, the Management offered to appoint the employee in service, subject to decision of the appeal. It is not in dispute that the employee did not accept the said offer / appointment Order, as the offer/ appointment Order was not being in continuation of the service, The Offer of appointment was made on 21st August, 1984.

iv) In the year 1989, the employee came to be reinstated in service pursuant to the Order passed by the University and College Tribunal. Though the employee was reinstated, the Management had not paid the back wages as according to the Management, it was having financial difficulties and constraints. Ultimately, the Management and the employee entered into a settlement on 9th February,1991. It will not be out of place to mention at this juncture that service of as many as eleven

employees was terminated and all of them succeeded before the University and College Tribunal and all them were granted reinstatement, in view of the fact that in the changed staffing pattern enough vacancies had come into existence and all the employees could be accommodated.

v) Under the settlement, dated 9.2.1991, the Management agreed to pay 65 % amount of the back wage, whereas in regard to 35 % amount of back wages, it was agreed that the Management will claim salary grant from the State Government and for that purpose, the Management and the employees would make a joint effort.

.3 It seems that the Government did not release the amount of 35 % in regard to which parties had agreed to move the government. As the employee did not receive the balance amount of 35% of the back wages, moved a Miscellaneous Application in the disposed of Appeal and claimed the said amount. The Tribunal noticed the Management and heard the parties. Neither the management nor the employee disputed the execution of the settlement arrived at between the parties. The application was purportedly moved under Section 63 of

the Maharashtra Universities Act, which vest the Tribunal with powers to penalise for non-compliance of the Order passed by it. The Management opposed the application by contending that under the settlement the Management had undertaken to pay 65 % of the back wages and it has paid the same hence contended that the application, which was belatedly filed in the year 1994, ought not be entertained. The Tribunal adopting a very pedentic approach, addressed the issue by observing that the Tribunal will only find out as to whether the Order passed by the Tribunal is complied with or not. Without considering the effect of the settlement or the binding nature of the settlement between the parties, the Tribunal proceeded to arrive at a figure of Rs. 25,355.24 Ps. as amount of back wages due and payable by the Management to the Employees, instead of passing an order of punishment against the Management, the Tribunal chose to pass an order directing the Management to pay above referred amount failing which the Tribunal had in contemplation to proceed for punishing the Management. It is this Order, dated 23.1.1994, which has been challenged by the Management. Whereas the same order has been challenged by an employee by contending that the Tribunal has erred in arriving at a figure of a sum of Rs. 25,355.24 Ps. and the amount is much more.

4. The learned Counsel for the employee submits that the amount of 35% of the back wages is certainly much more than the figure arrived at by the Tribunal. It is next contended that whatever calculations were submitted by the parties before the Tribunal are not properly appreciated and the impugned Order nowhere reflects the consideration thereof.

5. The further grievance is made by the learned Counsel for the employee that the pay fixation has not been properly made by the Management after granting reinstatement to the employee on 5.8.1989. It is contended that the employee was paid less salary than what he had, in fact, drawn at the time of termination of his service. Such result could only be obtained if an employee is denied continuity of service and not otherwise. In these peculiar circumstances, the impugned Order requires to be scrutinized.

6. One thing is clear that the Judgment and Order passed by the Tribunal, to the extent of granting reinstatement with continuity of service is concerned, the same has not been modified by any of the conditions contained in the settlement and hence, the employee is entitled to continuity of service on his reinstatement

on 5.8.1989.

7. the learned Counsel for the Management does not dispute the entitlement of the employee in that regard. If this be so, the employee will be taken to have been in continuous uninterrupted service with effect from 28th July, 1981 till date. If this be the case, then the petitioner's pay fixation has to be properly made after the employee was granted reinstatement on 5.8.1989. parties are in agreement that while making the pay fixation, the authorities shall take into consideration the yearly increments which were due to be paid to the employee every year by notionally calculating the same during the period commencing from 3.5.1984, which is the date of termination of the employee, till the date of his re-instatement which is 5.8.1989. The pay fixation shall have to be made by the Authorities notionally. However, on that count the employee will not be entitled to receive the same in the form of back wages or otherwise as the money claim has been settled by the parties under an agreement of settlement dated 9.2.1991.

8. When both the parties agreed to the terms of settlement contained in agreement dated 9.2.1991, it would be just and fair to bind the parties by the terms

of the settlement and thus, the employee cannot be permitted belatedly to set up a claim for the balance amount of 35 % of the back wages. In my opinion, the Tribunal has committed a patent illegality in brushing aside the settlement and only in restricting the enquiry to see whether the Order passed by the Tribunal is complied with. Even after passing the Order by the Tribunal, the parties were free to arrive at a settlement having regard to the then prevailing circumstances. The parties chose to agree to the terms of the settlement, under which the employee has received a sum of 65 % of the back wages. It would not be out of place to mention that having taken the advantage under one of the terms of the settlement, the employee cannot be permitted to turn around and question the legality of the other terms of the settlement. The employee was not justified in filing the Miscellaneous Application (No. 22 of 1994) belatedly in the year 1994, seeking to enforce the judgment and Order passed by the Tribunal, granting full back wages, when under the settlement, the employee had agreed to receive an amount of 65 % of the back wages from the Management and had also agreed to pursue the issue alongwith the Management for sanction of the sum equal to 35 % amount of the back wages by moving application to the State Government. The

employee on the same analogy cannot question the binding nature of the settlement by raising unsustainable contentions that the settlement is unconscionable and/or that the employee was coerced or was pressurised for entering into the said settlement. I am informed by the learned Counsel for the Management that such settlements are brought about in other identical matters, wherein the Tribunal had passed the Order.

9. One more factor also requires consideration and the same is that in the year 1984, the employee was offered employment, pending the appeal but the employee did not accept the same and has not in fact worked for a period of five years that is up to 5.8.1989. Despite having not worked for the said five years period, the employee has received a sum equivalent to 65 % of back wages, which in my view, balances the equities between the Management and the employee.

10. To conclude, suffice it to say that the Order passed by the Tribunal is neither legal nor just and proper and hence, requires an interference in exercise of writ jurisdiction.

11. The learned Counsel for the Employee submits

that the employee concerned has not been granted due promotions though he was entitled to. That issue cannot be adjudicated in these writ petitions and fall outside the scope of these writ petitions. However, it shall be open for the employee to approach appropriate forum for redressal of his grievance in that regard.

12. In this view of the matter, the Writ Petition filed by the Management bearing No. 5392 of 1994 deserves to be allowed, whereas the writ petition filed by the employee bearing No. 4465 of 1995 deserves to be dismissed.

In the rersult, the impugned Order passed by the University Tribunal in Miscellaneous Application No.22 of 1994, dated 28th November, 1994, is quashed and set aside.

It is declared that the employee [Writ Petitioner in W.P No. 4465 of 1995] shall be deemed to be in continuous employment of the Management with effect from 20th July,1981 without any interruption. It is further declared that the employee shall be entitle to have his pay fixed by Notional Grant of increments every year, even during the period

for which employee was kept out of employment.

The Joint Director of Higher education shall effect the pay fixation of the employee by grant of continuity of service and notional increments as aforesaid.

The Monetary claim of the Petitioner in writ petition No. 4465 of 95 is rejected.

The Miscellaneous application filed by the employee also stands rejected.

Rule made absolute in above terms.

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[A.P.DESHPANDE, J.]

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5392 OF 1994
ALONGWITH
WRIT PETITION NO. 4465 OF 1995

DATE OF DECISION : January 18, 2007.

For approval and signature :

The Hon'ble Mr. Justice A.P.Deshpande:

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Goa & Aurangabad Office?

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